STATE OF MICHIGAN

COURT OF APPEALS

RANDALL ENOS, d/b/a NORTHERN STONE COMPANY, Plaintiff-Appellant, v ALLIED PROPERTY AND CASUALTY INSURANCE COMPANY, Defendant-Appellee.	UNPUBLISHED January 5, 2010 No. 285420 Missaukee Circuit Court LC No. 07-006888-CK

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting summary disposition to defendant pursuant to MCR 2.116(C)(10) based on the trial court's determination that plaintiff was not entitled to underinsured motorist ("UIM") coverage.[1] We affirm.

Plaintiff was injured when a car being driven by Steven McMullin slid into his snowmobile, which he was lawfully operating on the shoulder of a road. McMullin was determined to be at fault for traveling too fast for the existing conditions. His insurance policy provided for a $20,000 limit, per person, on bodily injury liability. Plaintiff had $1,000,000 in UIM coverage through a business auto policy with defendant. However, defendant denied plaintiff's request for UIM benefits, maintaining that plaintiff was not operating an "owned vehicle" at the time of the accident. Plaintiff maintained that the endorsement's "owned vehicle" exclusion did not apply to snowmobiles.

We review a trial court's decision on a motion for summary disposition de novo. *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 196; 747 NW2d 811 (2008). Moreover, construction and interpretation of an insurance contract presents a question of law that is

[1] The applicable endorsement to the policy is entitled "Michigan Uninsured Motorists Coverage," but "uninsured motor vehicle" is defined in the endorsement to include an underinsured vehicle.

reviewed de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

In *Citizens Ins Co v Pro-Seal Serv Group, Inc*, 477 Mich 75, 82-83; 730 NW2d 682 (2007), the Court stated:

> "[I]n reviewing an insurance policy dispute we must look to the language of the insurance policy and interpret the terms therein in accordance with Michigan's well-established principles of contract construction." *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353-354; 596 NW2d 190 (1999). In *Henderson*, this Court described those principles as follows:
>
> > First, an insurance contract must be enforced in accordance with its terms. A court must not hold an insurance company liable for a risk that it did not assume. Second, a court should not create ambiguity in an insurance policy where the terms of the contract are clear and precise. Thus, the terms of a contract must be enforced as written where there is no ambiguity.
> >
> > While we construe the contract in favor of the insured if an ambiguity is found, this does not mean that the plain meaning of a word or phrase should be perverted, or that a word or phrase, the meaning of which is specific and well recognized, should be given some alien construction merely for the purpose of benefiting an insured. The fact that a policy does not define a relevant term does not render the policy ambiguous. Rather, reviewing courts must interpret the terms of the contract in accordance with their commonly used meanings. Indeed, we do not ascribe ambiguity to words simply because dictionary publishers are obliged to define words differently to avoid possible plagiarism. [*Henderson, supra* at 354 (citations omitted).]

A provision is considered ambiguous if it irreconcilably conflicts with another provision or is susceptible to multiple interpretations. *Klapp, supra* at 467. Nonetheless, in *Raska v Farm Bureau Mut Ins Co of Michigan*, 412 Mich 355, 362; 314 NW2d 440 (1982), the Court stated: "Yet if a contract, however inartfully worded or clumsily arranged, fairly admits of but one interpretation it may not be said to be ambiguous or, indeed, fatally unclear." Furthermore, exclusionary clauses are to be strictly construed in favor of the insured. *McKusick v Travelers Indem Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001).

Preliminarily, both parties maintain that the policy is unambiguous. In essence, plaintiff maintains that the UIM endorsement unambiguously provides it with UIM coverage, and defendant maintains that the policy and the endorsement, when read in conjunction with the policy itself, admit of but one interpretation—that the snowmobile was not covered. We agree with defendant's position.

Plaintiff's insurance policy contains a Declarations Page stating, at Item Two, that:

> This policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos." "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the COVERED AUTO'S section of the Business Auto Coverage Form. . .

A premium is shown in the "Uninsured Motorist Coverage" column on the form and is followed by the number 7, a symbol from the Covered Autos section of the Business Auto Coverage Form. The Covered Autos section states:

> Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos." The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos."
> **A. Description of Covered Auto Designation Symbols**
>
> | Symbol | Description of Covered Auto Designation Symbols |
> |---|---|
> | *** | |
> | 7 Specifically Described "Autos" | Only those "autos" described in Item Three of the Declarations for which a premium charge is shown . . . |

The explicit, unambiguous policy language provides that UIM coverage applies only to those "autos" described in Item Three of the Declarations. Here, the snowmobile is indisputably absent from Item Three of the Declarations page. Thus, UIM coverage does not apply to the snowmobile at issue.

In addition, section V(B) of the policy defines "auto" to mean "a land motor vehicle, 'trailer' or semitrailer designed for travel on public roads but does not include 'mobile equipment.'" "Mobile equipment" is defined in a Business Auto Endorsement to the policy to include "motorized golf carts, snowmobiles, and other land vehicles designed for recreational use." UIM coverage was specifically limited to only those autos shown as covered autos, and the snowmobile at issue was owned by plaintiff, but neither listed on the Declarations page of the insurance policy, nor does it fall within the policy definition of an "auto."

Finally, the "Coverage" section of the UIM endorsement states, "For a covered "auto" licensed or principally garaged in, or 'garage operations' conducted in Michigan, this endorsement modifies insurance provided under the following:"

> We will pay all sums the "insured" is legally entitled to recover as compensatory damages from the owner or driver of an "uninsured motor vehicle". The damages must result from "bodily injury" sustained by the insured caused by an "accident." The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the "uninsured motor vehicle."

The owned vehicle exclusion in the UIM endorsement provides:

> This insurance does not apply to any of the following:
>
> * * *
>
> "Bodily injury" sustained by you or any "family member" while "occupying" or as a result of being struck by any vehicle owned by you or any "family member" which is not a covered "auto" for Uninsured Motorists Coverage under this Coverage Form[.]

Here, the snowmobile was a "vehicle" owned by plaintiff and was not listed as "a covered 'auto'" on the Declarations page. This is true regardless of whether "auto" is or is not defined to include snowmobiles. As a result, the above exclusion would preclude UIM coverage for the snowmobile accident.

Affirmed. Defendant may tax costs pursuant to MCR 7.219.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Deborah A. Servitto